Comments of the Federal Communications Commission on H.R. 7017 and S. 1898, 86th Congress, regarding procedures before designation for hearing and protest procedures

S. 1898 (H.R. 7017)

S. 1898, which as introduced was similar to H.R. 7017, is the result of great concern on the part of the Commission and Federal Communications Bar Association with the inequities and procedural difficulties which arose out of the 1952 amendments to the Communications Act. Both the Commission and the Bar Association submitted legislative proposals designed to correct some of these problems. After the Senate hearings on these proposals, representatives of the Commission and the Bar Association devoted a great deal of effort to the problem and arrived at a compromise proposal which was acceptable to both Commission and Bar Association. The substance of the compromise proposal was approved by the Senate as S. 1898, August 19, 1959.

This proposed legislation would achieve a very substantial improvement over the existing situation. This Committee is generally familiar with the procedural provisions introduced into the Communications Act by by the 1952 amendments. The revisions to Section 309(b), which required the Commission, in situations when it was unable to find that the public interest would be served by a grant of the application without a hearing, to notify the applicant and other interested parties of the grounds and reasons for its inability to make the public interest findings, have proved to be particularly time-consuming and burdensome. In many situations such notice serves no useful purpose whatsoever and unduly delays the ultimate processing of the application. The proposals contained in S. 1898 give the Commission discretion to decide whether the public interest would be served by engaging in correspondence concerning its questions about the application under consideration. We believe that the adoption of this proposal would prove to be particularly helpful to this Commission in the processing of the many hundreds of broadcast applications which it must consider each year.

One of the most troublesome of the 1952 amendments to the Communications Act is the 309(c) provision for protest. This provision, which afforded any party in interest an opportunity to file a protest to a Commission grant with an automatic stay of the permit, in most cases, pending a hearing on issues specified by the protestant, has proved to be a most effective device for delay of potential competition in any community. The broad interpretation of party in interest which has been applied by the courts makes it possible for virtually any individual engaged in the communications business to protest the grant of an application for a radio or television station. S. 1898 would delete this provision of the Act and would substitute therefor a procedure which would preclude the Commission from granting any application for a period of thirty days following the issuance of public notice by the Commission of acceptance for filing of such application or any substantial amendment

thereof. It would further provide that any party in interest may file a petition to deny this application or amendment thereof at any time prior to the day of Commission grant thereof without a hearing or formal designation for hearing. Such petition would be served on the applicant and contain specific allegations of fact sufficient to show that the petitioner is a party in interest and that a grant thereof would not serve the public interest, convenience or necessity. The applicant would then be given an opportunity to file a reply in which allegations of fact or denials thereof would be supported by affidavit. If the Commission found upon the basis of the pleadings filed or other matters which it may officially notice that there were no substantial and material questions of fact and that a grant of such application would be in the public interest, convenience and necessity, it could then make the grant, deny the petition and issue a concise statement of reasons for denying the petition which would dispose of each substantial question presented thereby.

In addition to these general provisions, certain types of applications where a 30 day delay is not appropriate or desirable are excepted from this provision. Moreover, the proposed legislation would give the Commission authority to fix by rule a cut-off date by which such a petition to deny must be filed. This cut-off date must be reasonably related to the period of time within which the application concerned might be expected to be reached for Commission processing and might in no instance be less than the 30 days required by the statute.

The adoption of the proposals set forth in S. 1898 would prove to be most helpful to the Commission.